

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
October 23, 2007 Session

JASON WAYNE ROGERS v. CHERRY LINDAMOOD, WARDEN

**Direct Appeal from the Circuit Court for Wayne County
No. 8725 Stella Hargrove, Judge**

No. M2007-00708-CCA-R3-HC - Filed December 12, 2007

The petitioner, Jason Wayne Rogers, appeals the circuit court's order summarily dismissing his pro se petition for writ of habeas corpus. Following our review of the record and applicable law, we affirm the circuit court's order.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

J.C. McLIN, J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J., and ROBERT W. WEDEMEYER, J., joined.

Jason Wayne Rogers, Pro Se, Clifton, Tennessee.

Robert E. Cooper, Jr., Attorney General and Reporter; Mark A. Fulks, Assistant Attorney General, for the appellee, State of Tennessee.

OPINION

According to the petitioner's judgment of conviction, the petitioner was indicted for aggravated child abuse, a Class A felony. Ultimately, he pled guilty to attempted aggravated child neglect, a Class B felony. *See* Tenn. Code Ann. §§ 39-15-402(b), 39-12-107(a). He was sentenced to fifteen years as a Range I, standard offender. On or about January 11, 2007, the petitioner filed a pro se petition for habeas corpus relief, alleging that he was denied the right to effective assistance of counsel, his guilty plea was unknowing and involuntary, and his sentence was illegal because it exceeded the maximum twelve-year range statutorily authorized for a Range I offender convicted of a Class B felony. The circuit court issued an order dismissing the petition. In its order, the court found that the grounds alleged by the petitioner were not cognizable and did not entitle him to habeas corpus relief. The petitioner now brings this appeal.

Article I, section 15 of the Tennessee Constitution guarantees the right to seek habeas corpus relief. Tennessee Code Annotated sections 29-21-101 through 29-21-130 codify the applicable procedures for seeking a writ. However, the grounds upon which a writ of habeas corpus may be

issued are very narrow. *Taylor v. State*, 995 S.W.2d 78, 83 (Tenn. 1999). A writ of habeas corpus is available only when it appears on the face of the judgment or the record of the proceedings upon which the judgment was rendered that a court was without jurisdiction to convict or sentence the defendant or that the defendant is still imprisoned despite the expiration of his sentence. See *Summers v. State*, 212 S.W.3d 251, 255 (Tenn. 2007); *Archer v. State*, 851 S.W.2d 157, 164 (Tenn. 1993); *Potts v. State*, 833 S.W.2d 60, 62 (Tenn. 1992). The purpose of a habeas corpus petition is to contest void and not merely voidable judgments. *Archer*, 851 S.W.2d at 163. A void judgment is a facially invalid judgment, clearly showing that a court did not have statutory authority to render such judgment; whereas, a voidable judgment is facially valid, requiring proof beyond the face of the record or judgment to establish its invalidity. See *Taylor*, 995 S.W.2d at 83. The burden is on the petitioner to establish by a preponderance of the evidence, “that the sentence is void or that the confinement is illegal.” *Wyatt v. State*, 24 S.W.3d 319, 322 (Tenn. 2000). Moreover, it is permissible for a court to summarily dismiss a petition for habeas corpus relief, without the appointment of counsel and without an evidentiary hearing, if the petitioner does not state a cognizable claim. See *Summers*, 212 S.W.3d at 260; *Hickman v. State*, 153 S.W.3d 16, 20 (Tenn. 2004).

The petitioner is not entitled to habeas corpus relief. To begin, the petitioner’s claims involving ineffective assistance of counsel and involuntary and unknowing guilty pleas are not cognizable because they require proof beyond the face of the record or judgment to establish the invalidity of his conviction. See *Passerella v. State*, 891 S.W.2d 619, 627 (Tenn. Crim. App. 1994); *Archer*, 851 S.W.2d at 164. To reiterate, a defect which renders a judgment merely voidable is not subject to collateral attack via habeas petition.

With regard to the petitioner’s claim of illegal sentence, we note that *Hoover v. State*, 215 S.W.3d 776 (Tenn. 2007), controls our analysis. In *Hoover*, our supreme court noted that offender classification and release eligibility are non-jurisdictional and legitimate bargaining tools in plea negotiations under both the 1982 and 1989 Sentencing Acts. *Id.* at 779-80. In addition, our supreme court specifically held that a plea-bargained sentence is legal so long as it does not exceed the maximum punishment range authorized for the plea offense. *Id.* at 780. In the instant case, the petitioner’s fifteen-year sentence is not a void sentence even though it exceeded the maximum sentencing range for his Range I classification because the sentence fell within the maximum punishment range of thirty years authorized for Class B felony offenses. See Tenn. Code Ann. § 40-35-112(c)(2). Accordingly, we conclude that the petitioner does not state a cognizable ground for habeas corpus relief on this issue.

For the reasons stated herein, we conclude that the petitioner failed to state a cognizable claim for habeas corpus relief, and the circuit court’s order summarily dismissing his pro se petition for habeas corpus relief is affirmed.

J.C. McLIN, JUDGE